Supreme Court, U.S.
FILED

No. 09-735

DEC 16 2009
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In The Supreme Court of the United States

JON D. ALEXANDER
est. 1959 Handyman,

Petitioner,

v.

LEE TAYLOR,
CHARLES E. SMITH, JR., et al.

Respondents.

On Petition for Writ of Certiorari to the
Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

Jon D. Alexander
est. 1959 Handyman
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Petitioner pro se

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QUESTIONS PRESENTED

1. Why was my petition filed on April 16, 2007 for a rehearing with IFF Agency secretary and 12 persons panel denied? First Amendment of the U. S. Constitution.

2. Why was my petition for a new trial, filed on April 28, 2007 in Rockbridge County Circuit Court denied? First Amendment of the U. S. Constitution.

3. Why was my case CL08000123-00 for conspiracy dismissed? First Amendment of the U.S. Constitution and my Fifth and Sixth Amendments of the Constitution and the Commonwealth of Virginia.

LIST OF PARTIES

Petitioner: Jon D. Alexander, est. 1959 Handyman

Respondents: Charles E. Smith, Jr.; The Estate of Charles E. Smith, Sr., deceased; Lee Taylor; Jay W. Deboer; Nick A. Cristner; David B. Ashe; James Hollar; Victor Y. Traylor; Steve Paulk; Tim Kaine; Robert F. McDonnell

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OPINIONS AND ORDERS BELOW

The Entry of Judgment on Verdict of the Circuit Court of Rockbridge County in Charles Earl Smith v. Jon D. Alexander, entered May 8, 2006, which is contained in the appendix at App.1.

The Order of the Supreme Court of Virginia in Record No. 090743, Jon D. Alexander v. Charles E. Smith, Jr., et al., entered July 21, 2009 which is contained in the appendix at App. 3.

The Order Upon a Petition for Rehearing of the Supreme Court of Virginia in Record No. 090743, Jon D. Alexander v. Charles E. Smith, Jr., et al., entered September 22, 2009 which is located in the appendix at App. 4.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The judgment of the Supreme Court of Virginia of a Petition for Rehearing was entered on September 22, 2009. This Petition for Writ of Certiorari is timely filed within 90 days of that date.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Trogdon and Commonwealth, 72 Va. (31Gratt) 862 (1878). Where the Commonwealth failed to proved larceny by false Pretense the conviction cannot be upheld on grounds that the evidence at trial was sufficient to sustain a conviction of the common law crime of larceny by trick and that the jury instruction set forth all the elements of this crime an accused is entitled to be clearly informed of the charge against him. The Commonwealth cannot retrospectively argue that defendant should be guilty of a crime for which he was not prosecuted, and on which the jury was not instructed. Baker v. Commonwealth, 225 Va. 192, 355 S.E. 2d, 788 (1983).

Anabel v. Commonwealth, 65 Va. (24Gratt), 563, 1873: Hubbard v. Commonwealth, 201 Va. 61, 109 S.E. 2d. 100 1959. In order to convict one of larceny by false pretense, the Commonwealth must prove four elements of the offense charged.

1. An intent to defraud.
2. An actual fraud.
3. Use of false pretense for the purpose of perpetrating the fraud.
4. Accomplishment of the fraud by means of the false pretense used for the purpose that is, the false pretense to some degree must have induced the owner to part with his property.

181.2-500. Applicable limitation. An Action brought under this section and 2-499 survives and hese was subject to the five year limitation in former 8 -24. Federate Garphics Cos. V. napotnik, 424 F.SUPP 291 (E.D. Va 1976). Malicious prosecution distinguished. Malicious prosecution involves wrongful conduct directed at a person which may indirectly damage property. The statutory action under this Section and 18.2-499 and this section only when malicious conduct is directed at ones business, not one's person, and the statute focuses upon conduct directed at property i.e. one's business and apply only to conspiracies resulting in business related damage. Buschi v. Kirven, 775 F.2d, 12.40, 4th cir 1985.

Bourgeois v. Commonwealth, 217 Va. 268, 227 S.E. 2d 714 (1976): Reigert v. Commonwealth, 218 Va. 511, 237, S.E. 2d, 803 (1977): Sult v. Commonwealth, 221 Va. 963, 275, S.E. 2d b22, (1981): Quidley v. Commonwealth, 221 Va. 969 275, S.E. 2d 622 (1981).

Under the provision of this section, for one to be guilty of the crime of larceny by false pretense, he must make a false representation of an existing fact with knowledge of its falsity and, on the basis, obtain from another person money or other property which may be the subject of larceny, with the intent to defraud. Lund v. Commonwealth, 217 Va. 688, 232 S.E. 2d, 745 (1977). Merely showing that the accused knowingly stated what was false in not sufficient. There must also be proof that

his intent was to defraud. Riegert v. Commonwealth, 218 Va. 511, 237 S.E. 2d, 803 (1977).

COLOR OF LAW

The appearance or semblance, without the substance, of legal right, misuse of power, possessed by virtue of state law and made possible only because wrongdoer is clothed with authority of state, is action taken under "Color of Law". Acts "under color of any law" of a state include not only acts done by state officials within the bounds or limits of their lawful authority, but also acts done without and beyond the bounds of their lawful authority; provided that, in order for unlawful acts of an official to be done under "color of law", the unlawful acts must be done while such official is purporting or pretending to act in the performance of his official duties, that is to say, the unlawful acts must consist of an abuse or misuse of power which is possessed by the official only because he is an official; and the unlawful acts must be of such a nature of character, and be committed under such circumstances that they would not occur but for the fact that the person committing them was an official then and therefore exercising his official powers outside the bounds of lawful authority. 42 V.S.C.A . 1993.

COLOR OF OFFICE

Pretense of official right to do act made by one who has no such right. An act under color of office is an act of an officer who claims authority to do the act by reason of his office when the office does not confer on him any such authority.

CONSTITUTIONAL TORT

Every person who under color of any stature, ordinance, regulation, custom or usage, of any state or territory, subject or causes to be subject, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. V.S.C.A. 1983 Color of law.

Open enforcement cases reflect only those complaints for which a departmental investigation has determined that sufficient evidence exists to establish probably cause on a violation of the law or regulations. Only those that have proceeded through an investigation to the adjudication stage are displayed. Complaints involving allegations of criminal activity and cases subject to alternative dispute resolution are not disclosure and therefore are not displayed. The D.O. POR Board error in explaining why

they would not investigate my case as a matter of fact, told me that they don't do investigation.

Defendants here had the burden of producing evidence tending to overcome plaintiff's prima face showing that the defendants violated the laws and the Constitution of the Commonwealth and the United States.

Amendment V (1791) No person shall be held for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger, nor shall any person be subject for the offense to be twice put in jeopardy against himself, no be deprived of life, liberty or property without due process of law; not shall private property be taken for public use without just compensation.

Amendment VI (1791) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed which District shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have a compulsory process of obtaining witnesses in his favor, and have the assistance of counsel for his defense.

Required Proof – The conspiracy statute does not require proof of actual malice, the statutes merely require proof of legal malice, i.e., that defendant acted intentionally, purposely, and without lawful justification. Commercial Bus. Sys. v. BellSouth Services, Inc. 249 Va. 39, 453 S.E. 2nd 2b1 (1995). In this case Allen Realty Corp. v. Holbert 227 Va, 441.318 S.E. 2d 592 1984. The defendants did show malice by perjuring and calling me a thief.

Elements of Offense – To recover in an action for conspiracy to harm a business, the Plaintiff must prove (1) a combination of two or more persons for the purpose of willfully and maliciously injuring Plaintiff in his business, and (2) resulting in damage to Plaintiff. To recover in an action under this section, plaintiff must prove (1) a combination of two or more persons for purpose of willfully and maliciously injuring plaintiff in his business and (2) resulting damage to Plaintiff. Saliba v. Exxon Corp., 865 F SUPP. 306 (W.D.Va. 1994) AFF'd, 62 F. 3rd 322 (4th cir. 1995).

This statutory action provides a remedy for wrongful conduct directed to the business. An injury to one's business is clearly an injury to one's property interest. Federate Graphics Cos. v. Napotnik, 424 F SUPP. 291 (E.D. Va. 1976). Picture Lake Campground, Inc. v. Holiday Inns, Inc., 497 7. SUPP 358 (E.d. Va 1980).

STATEMENT OF THE CASE

I, Jon D. Alexander (Handyman) met Mr. Charles Earl Smith, Jr. on April 16, 2002 at about 4:30 p.m. at Fisher Auto Parts. I was engaged in a conversation with a gentleman whom I had worked with earlier in the year. Mr. Charles Earl Smith, Jr. (ada) Rocky heard me say that I was working on a home-place for a person. He cut in the conversation and asked me if I was a contractor. I answered yes and then showed him by Pocket cards from the State of Virginia.

Mr. Smith, Jr. wrote his father's address then said that his father needs two rooms built onto his house. I told him that I could not do anything until September 10, 2002. I went to talk with Mr. Smith Sr. at his son's request (Charles E. Smith, Jr.) on April 16, 2002 at around 7:00 p.m. Mr. & Mrs. Smith, Sr. told me that they were going broke because, they were paying Rocky's bills – His rent, Child support, his rent and his alimony. I also talked with Rocky's cousin who lived next door. Mr. Smith, Sr. & his wife and I talked about building the two rooms. I told the Smith's that I could not do it until the middle of September. I drew some sketches and showed the sketches to them on April 20, 2002. I told them the price for building the two room would be approximately $27,000. Mr. Smith, Sr. called everyday and said I could work anytime I wanted to, including Sat. & Sundays. I went there with a contract for $27,000 on Wednesday, May 8, 2002 at

about 1:00, Mrs. Smith (Dorothy) stated that the bank would let her borrow only $22,000.

Mr. Charles Smith Sr. talked for a while and then asked me if he made the rooms 14' x 20' rather than 16' x 20' would I do it for $22,000. I told him that since I've known them for a long time that I would do it, at that time I filled in a three payment contract, the first payment was to be in the amount of $7,500.00, and the second payment was to be $7500.00 and the third payment was to be $7000.00. The completion date as August 8, 2002. That was the only contract on May 8, 2002.

I rough plumbed the second floor for the bathroom. then I was asked by Mr. Smith, Sr. to change the plans. He asked me to move the bathroom from the second floor room to the roof to make way for a staircase. The staircase was built where the bathroom was suppose to be. I made the said changes and I was still on schedule.

Charles Earl Smith, Jr. asked me after the skeleton had been covered, insulated, and the sub walls inside had been covered to put five new windows in addition to the windows listed on the specification sheet.

Mr. Charles E. Smith, Sr. got a lawyer and sued me for breach of contract, he breached the contract June 20, 2002 when he paid me $3,500.00 when the payment was suppose to be $7,500.00 on the second payment of the contract.

May 2, 2006 we to court, his lawyer Lee Taylor told the court the Rockbridge County Circuit this, Your Honor ladies and gentlemen we have got to stop J.D. Alexander preying on the elders of Rockbridge County.

Mr. Taylor called Mr. Charles E. Smith, Sr. to the stand, he said do you see the man in this court room that busted into your kitchen and demanded that you give him $7,000.00 and sign a second contract, yes sir and pointed at the table where I sitting with my lawyer. Mr. Taylor called Charles E. Smith, Jr. and asked him the same question – Do you see the man that your mother said burst in her kitchen and she called you to tell you this? He pointed to me where I sat with my lawyer, and he answered Yes sir, I've never seen him before in my life. I knew the Smiths' were broke and that Mrs. Dorothy Smith had gone to the bank to borrow $27,000.00 and could borrow only $22,000.00. I knew this on May 8, 2002 when we signed the three part contract, so why would I have broken in their house on May 10, 2002 and demand $7,000.00. I knew they were broke on April 16, 2002 because they told me they were running out of money. I went to the Smiths' house on May 9, 2002 and removed the deck so that Miss utility could inspect the land for utility lines.

Mr. Charles Smith, Jr. didn't tell Mr. and Mrs. Smith that he had $70,000.00 in the bank. In June of 2002 (Rocky) aka Charles E. Smith, Jr. bought an antique Corvette for $19.000.00, new tires for $3,500.00, an

antique guitar for 1,100.00 and $900.00 air conditioner. He showed me and my helper the cash receipts.

Charles Earl Smith, Jr. told me and my helper that this money came from the sale of his house in Roanoke, Va. And that he and his ex-wife split $140,000.00

REASONS FOR GRANTING THE PETITION

I, Jon D. Alexander should be granted this petition because I an innocent of this crime. I have been denied three times –a trial date for an appeal, a rehearing of Department of Professional Regulations (D.O.P.R.) and denied me a court date for a trial for Conspiracy in The Rockbridge County Circuit Court. This unjust matter has caused me hardship, and ruined my reputation, all of this stemmed from helping the Smith Family out.

I AM INNOCENT OF THIS CRIME, LARCENCY.

J. D. ALEXANDER

Est. 1959 (Handyman)

CONCLUSION

The petition for a writ of certiorari should be granted.

I submit that with all the evidence showing my innocence, I pray that I can get back my license and start to work again. (Clear My Name)

Respectfully submitted,

J. D. ALEXANDER
Est. 1959 (Handyman)
316 Massie Street
Lexington, VA 24450
(540) 463-5931

Virginia: In the Circuit Court of Rockbridge County

Charles Earl Smith,
Plaintiff,

v.

Jon D. Alexander,
Defendant.

ENTRY OF JUDGMENT ON VERDICT

The above styled matter came before the court for trial with a jury on May 2, 2006. Present before the court were the parties, represented by counsel. Upon trial of the said case, presentation of evidence, consideration of the law of the facts and law of the case, a verdict was rendered by the jury for the Defendant on Count One, Breach of Contract, for the Defendant on Count Two, Fraud and Misrepresentation and for the Plaintiff in the amount of $7,000.00 plus prejudgment interest from January 8, 2003, in the amount of $1, 391.10 on Count Three, Larceny.

Therefore, it is hereby and judged that judgment be entered and docketed upon the verdict of the jury, as set out herein.

May 8, 2006

/s/ Michael S. Irvine, Judge

I ask for this:

/s/ Taylor, Attorney for Plaintiff
Seen and objected to;

/s/ Robert Armstrong, Attorney for Defendant.

Basis for objection is that verdict for plaintiff was contrary to law and evidence.

Virginia:
In the Supreme Court of Virginia, Tuesday, the 21st day of July, 2009.

Jon D. Alexander,
Appellant,

v.

Record No. 090743
Circ. Ct. No.
CL08000123

Charles E. Smith, Jr., et al.,
Appellees.

From the Circuit Court of Rockbridge County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of the opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Ebby Edwards
Deputy Clerk

Virginia:

In the Supreme Court of Virginia, Tuesday, the 22nd day of September, 2009.

Jon D. Alexander,
Appellant,

v.

Record No. 090743
Circ. Ct. No.
CL08000123

Charles E. Smith, Jr., et al.,
Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 21st day of July, 2009 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

Patricia L. Harrington, Clerk

By: /s/ Ebby Edwards
Deputy Clerk

Authorities

Gideon v. Wainwright, 372 U.S. 335 (1963), argued 15 Jan. 1963, decided 18 Mar. 1963 by vote of 9 to 0; Black for the Court, Douglas, Clark and Haarlan concurring. Clarence Gideon was charged with breaking and entering a poolroom with intent to commit a misdemeanor, a felony under Florida Law. Being without funds, Gideon requested that counsel be appointed for him; the Florida trial court refused and Gideon conducted his own defense " about as well as could be expected from a layman" (p. 337). The jury returned a verdict of guilty. Gideon filed a habeas corpus petition in the Florida Supreme Court claiming that his federal constitutional rights had been abridged by the trial court's refusal to appoint counsel for him; the Florida Supreme Court denied relief and Gideon appealed in forma pauperis to the U.S. Supreme Court.

The court appointed Abe Fortas, a prominent lawyer who alter served as a justice, to argue Gideon's case and address whether "Betts v. Brady (1942)" should be overruled. Betts had held that, in state courts, the Fourteenth Amendment's Due Process Clause only require that counsel provide indigents in special circumstances. However, the Court had not upheld a single denial of right to counsel under the Betts rule since its 1950 decision in Quicksal v. Michigan. The Court was looking for an opportunity to overrule Betts, and Gideon provided that opportunity.

A unanimous Court overruled Betts and held the Sixth Amendment, as applied to states by the

Fourteenth Amendment, required the counsel be appointed to represent indigent defendants charged with serious offenses in state criminal trials. At his retrial, Gideon was represented by appointed counsel who uncovered new defense witnesses and discredited prosecution witnesses; a new jury acquitted Gideon.

In overruling Betts, Justice Hugo Black, for the majority, argued that the Court was "returning to...old precedents, sounder we believe than the new" (p. 334). In Powell v. Alabama (1932), the Court had held that when an indigent defendant is charged with a capital offense in state court and is incapable of making his own defense, due process requires that counsel be appointed for him. It noted that "the right to be heard would be of little avail if it did not comprehend the right to be heard by counsel" (p. 68). In Johnson v. Zerbst (1938), the Court declared a right to appointed counsel in federal criminal cases. By 1942, thirty-five states required counsel be appointed to represent indigents in serious non-capital as well as capital cases; but in Argersinger v. Hamlin (1972), the Court extended the right to appointed counsel to misdemeanors when the defendant is sentenced to imprisonment. In another case decided the same day as Gideon, Douglas v. California, the Court held that the Equal Protection Clause conferred a right to appoint counsel for first appeals of rights. In subsequent years, Gideon spawned two lines of cases. One series of cases deals with Sixth Amendment Right to Counsel and at what stages of the criminal justice process the defendant must be allowed the benefit of counsel. Antoher line of Cases acknowledges that

the right to counsel and attempts to develop standards for determining when the right had been denied.